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In re Application of
Underhill et al
Application No. 10/022,328
Filed: December 28, 2001
Attorney Docket No. KCC 4774 (K-C
15,646 E)

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: DECISION REGARDING REQUEST
: FOR RECONSIDERATION OF PTA
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This decision is in response to Applicants' "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705" filed on January 28, 2005 advising the Office that the granted PTA is believed to be longer than it should have been. The Office will construe this request as a letter of good faith and candor. The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants request is **GRANTED to the extent herein indicated.** The Office will adjust the PTA determination to reflect a determination of 343 days, not 348 days as suggested by applicant.

Applicants agrees with the 444 days pursuant to 37 CFR 1.702(a)(1) and the 49 day reduction pursuant to 37 CFR 1.704(c)(8) are not in dispute. Applicant further advises the Office of a later IDS submission having a certificate of mailing date of October 27, 2004 and receipt in Office date of November 1, 2004 is not reflected as a PTA reduction. Accordingly, applicants believe that an additional 47 days of PTA delay are in dispute.


Applicants are correct in that a submission of an supplemental paper (IDS) occurred after the response to non-final dated September 10, 2004. The IDS submission was not entered into the PALM record. The Office notes that applicants did not provide any 1 month certification statement pursuant to 37 CFR 1.704(d) and accordingly a reduction should have been taken for this supplemental paper. The reduction should have been 52 days.¹ Accordingly, the overall determination at the time of the mailing of the notice of allowance is 343 days (444-49-52=343).

After the mailing of the decision, the file is being forwarded to the Office of Patent Publication for a prompt issuance of the patent. The Office notes that any additional time for failing to issue the application within four months of the payment of the issue fee and other requirements being satisfied will be added at the time of the issuance of the patent.

¹Reduction began on September 11, 2004(day after initial reply) and ended on November 1, 2004. Note that for purposes of PTA, the filing date of a response is the date of receipt in the Office pursuant to 37 CFR 1.6 not the date of the certificate of mailing. See 37 CFR 1.703(f). Accordingly, the clock would have stopped on November 1, 2004 not October 27, 2004.

Because applicants are submitting this request out of good faith and candor, there is no petition fee related to this decision.

Any questions concerning this decision should be directed to Kery A. Fries at 571-272-7757.

A handwritten signature in black ink, appearing to read "Kery A. Fries". The signature is written in a cursive, flowing style.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted PAIR calculation